IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6082 of 1985
with
CIVIL APPLICATION No 1362 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CYANAMID INDIA LTD

Versus

UNION OF INDIA

Appearance:
1. Special Civil Application No. 6082 of 1985
MR SN SHELAT, Senior Advocate with MR JR CAMA and
MR HARSHADRAY A DAVE for Petitioner No. 1-2
MR JITENDRA MALKAN for Respondent No. 1-5

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 26/07/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

The main petition is filed for challenging the show cause notices dated 22.8.1985 and 4.9.1985 (Annexure "F Colly.") and the show cause notice dated 17.9.1985 at Annexure "G". The petitioner-company had also challenged Tariff Advice No.15/85 and Trade Notice No.58/85 (Annexure "E Colly.") and had also prayed for a declaration that the petitioners are entitled to avail of the benefit of set-off under Notification No.201/79 as amended while paying duty on patent and proprietary medicines falling under Tariff Item 14E in manufacture of which gelatine crystals and capsules are used as input.

2. When the petition had reached final hearing before this Court on 16.12.1991, this Court directed the petitioner-Company to file reply to the show cause notices and also directed respondent No.4- Assistant Collector of Central Excise, Valsad to render his decision on the show cause notices. The Court also gave the following direction:-

> "..... The decision that may be taken and the order that may be passed by respondent No.4 shall be placed on record of this petition. The decision that may be taken and the order that may be passed by respondent No.4 shall not be implemented without the permission of this Court."

Pursuant to the aforesaid order, the petitioner filed its reply and the Assistant Collector passed order in original dated 27.1.1992 (Annexure "P") and order dated 10.5.1993 (Annexure "Q"). By Civil Application No.1362 of 1993, the respondents in the main petition i.e. the authorities prayed for permission to implement and enforce the aforesaid orders. The application was ordered to be head with the main matter.

It appears that for one reason or another, the petition did not reach final hearing. When the petition reached final hearing on 7.7.2004, the petitioner's applications (Civil Application Nos.1365 and 1366 of 1993) for amendment of the petition were granted.

3. Today when the matter is called out, having heard the learned counsel for the parties, we are of the view that in view of the nature of the controversy involved, it would be in the fitness of things if this controversy

is examined by the appellate authority.

4. Mr Shelat for the petitioner, however, submits that since the orders were passed way back in 1992 and 1993, the bar of limitation would arise.

5. We are of the view that since as per the interim order dated 16.12.1991 of this Court, the orders of the Assistant Collector, Valsad were to be placed on the record of this petition and were not to be implemented without the permission of this Court, the petitioner was not expected to file any appeal against the said orders at that stage. Now, that the main petition has reached final hearing, looking to the nature of the controversy involved herein, we are of the view that the appellate authority should first examine the controversy. There would be no impediment in giving direction under Article 226 of the Constitution to the appellate authority to the effect that if the petitioner-Company files appeal/s against the aforesaid orders dated 27.1.1992 (Annexure "P") and 10.5.1993 (Annexure "Q") by 31st August 2004, the appellate authority shall hear and decide the appeal/s on merits without raising any bar of limitation.

It is directed accordingly.

6. Since by interim order dated 16.12.1991, this Court had directed that the orders of the Assistant Collector to be rendered were not to be implemented without the permission of this Court and since we are now relegating the petitioner to the appellate remedy, we further direct that the said orders-in-original dated 27.1.1992 (Annexure "P") and 10.5.1993 (Annexure "Q") shall not be implemented till 31st December 2004 by which the appellate authority shall hear and decide the appeal/s.

7. The petition is accordingly disposed of in terms of the aforesaid directions and observations.

Rule is discharged with no order as to costs.

8. In view of the aforesaid order, no orders are required to be passed on Civil Application No.1362 of 1993 and the same is disposed of accordingly.

(M.S. SHAH, J.)

(D.A. MEHTA, J.)
zgs/-